

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 315.10, the Iowa Department of Transportation, on August 9, 2017, adopted amendments to Chapter 163, “RISE Program,” Iowa Administrative Code.

The amendments to this chapter:

- Remove or revise outdated, unnecessary language.
- Update definitions.
- Clarify the purpose of the program and the types of development activities that the program is intended to assist by adding a definition for “value-adding activities” and by further defining that tourism must also have a state impact rather than just a local impact.
- Correct contact information.
- Provide more detail on the responsibility of the Iowa Transportation Commission to monitor RISE fund cash flow and, if necessary, take action to ensure availability of funds.
- Add that all projects require a public letting to be completed by the public project sponsor in accordance with all laws and rules.
- Include further explanation of eligible project costs for right-of-way, design, utilities and permit costs. As a result, complementary changes were also made to the ineligible activities.
- Make changes to the ability to incur eligible right-of-way costs prior to a funding commitment to include the ability to incur certain design costs.
- Clarify that matching funds to RISE funds may include funds from other state agencies, programs or in-kind costs.
- Clarify that applications must include a formal resolution from the jurisdiction to more clearly communicate the requirement that the roadway project be dedicated to public use and be properly maintained.
- Add a new subrule stating that project costs may be subject to audit by the Department.

Notice of Intended Action for these amendments was published in the June 21, 2017, Iowa Administrative Bulletin as **ARC 3131C**. These amendments are identical to those published under Notice of Intended Action.

These rules do not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 315.

These amendments will become effective October 4, 2017.

The following amendments are adopted.

ITEM 1. Amend rule **761—163.1(315)**, definitions of “Direct jobs created,” “Direct jobs retained,” “Economic development,” and “Immediate opportunity project,” as follows:

“*Direct jobs created*” refers to ~~new~~ jobs new to the state in firms, developments, or sites specifically assisted by a RISE project.

“*Direct jobs retained*” refers to existing Iowa jobs that would otherwise be lost in firms, developments, or sites specifically assisted by a RISE project.

“*Economic development*” means private investment involving the creation of new jobs and income or the retention of existing jobs and income that would otherwise be lost. For the purposes of this program, economic development shall be viewed from a statewide perspective rather than a local or substate, regional perspective and shall result in a net gain to the state.

“*Immediate opportunity project*,” one of the two types of RISE projects, is a roadway project that needs a funding commitment within a short time period and meets the threshold criteria in subrule ~~163.8(6)~~ 163.10(6). The project primarily provides improved access to ~~either~~ a single economic unit,

such as a county, a city, an industrial park, a plant or other business, a development site or a tourist attraction, ~~or to a portion of a metropolitan area.~~

ITEM 2. Rescind the definition of “Metropolitan area” in rule **761—163.1(315)**.

ITEM 3. Adopt the following new definition of “Value-adding activities” in rule **761—163.1(315)**:
“*Value-adding activities*” means activities which, through the employment of knowledge or labor, add value to a product, process or service that results in the creation of new wealth to the state.

ITEM 4. Renumber rules **761—163.2(315)** to **761—163.7(315)** as **761—163.3(315)** to **761—163.8(315)**; rules **761—163.8(315)** and **761—163.9(315)** as **761—163.10(315)** and **761—163.11(315)**; and rule **761—163.11(315)** as **761—163.12(315)**.

ITEM 5. Adopt the following new rule 761—163.2(315):

761—163.2(315) Information and forms. Information, instructions and application forms may be obtained from the Office of Systems Planning, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1664; or through the department’s Web site at www.iowadot.gov.

ITEM 6. Amend renumbered rule 761—163.3(315) as follows:

761—163.3(315) Purpose of RISE program. The purpose of the RISE program is to promote economic development in Iowa through the establishment, construction, improvement, and maintenance of roads and streets. The RISE program shall be targeted toward value-adding activities to provide maximum economic impact to the state. Value-adding activities feed new dollars into the economy. As these dollars are circulated, the state experiences economic growth. Tourism activities that result in the attraction of out-of-state dollars to the state economy may also be targeted by the program. Residential development, local government facilities, local public schools, locally oriented business services and personal services are generally not value-adding activities and will rarely meet the intent of the program.

The RISE program shall also be administered to encourage economic diversification, new business opportunities, small business development, exporting, import substitution and tourism in Iowa.

ITEM 7. Amend renumbered rule 761—163.4(315) as follows:

761—163.4(315) Administration of RISE program.

163.4(1) and **163.4(2)** No change.

~~**163.4(3)** The department’s office of systems planning shall be responsible for administering the RISE project selection process. RISE application instructions and forms are available upon request to the Office of Systems Planning, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1664. Application forms and instructions are also available on the Internet at www.dot.state.ia.us/forms.~~

163.4(4) 163.4(3) The department shall annually prepare a written report indicating the amount and percentage of funds expended during the previous year on primary roads, secondary roads, city streets, state park roads and county conservation parkways.

ITEM 8. Amend renumbered rule 761—163.5(315) as follows:

761—163.5(315) Source, allocation, and use of RISE funds.

163.5(1) No change.

163.5(2) Allocation and use.

a. to c. No change.

d. *Type of projects.* The two types of projects which may be funded under the RISE program are immediate opportunity projects and local development projects. The requirements and procedures specifically applicable to the two project types are located in the following rules of this chapter:

(1) Immediate opportunity projects: Rule ~~163.8(315)~~ 761—163.10(315).

(2) Local development projects: Rule ~~163.9(315)~~ 761—163.11(315).

e. No change.

f. *Use of repaid funds.* RISE funds repaid to the department for any reason may be used for other projects or carried over to the next programming cycle ~~at the discretion of the commission~~. RISE funds repaid shall be credited to the share of the fund from which the project was originally funded.

g. No change.

h. *Reserve for future needs and contingencies.* The commission shall ~~hold back from funding~~ commit an amount of RISE funds sufficient to meet ~~monitor RISE fund commitments and expected RISE fund cash flow and take actions necessary to ensure that funds remain available for anticipated present and future immediate opportunity project needs and other contingencies. Such actions may include placing a moratorium on the receipt and award of local development RISE applications, placing a limit on RISE dollars awarded to each project, or taking other actions at the discretion of the commission.~~

ITEM 9. Amend renumbered subrule 163.7(1) as follows:

163.7(1) Applicant eligibility. All incorporated cities and all counties in the state of Iowa are eligible to apply for and receive funds under the RISE program. The department is also eligible to initiate projects and receive funds under this program; but need not formally apply for funds. Private firms or developers or other agencies may not apply directly for funds; but are encouraged to work with county or city governments in seeking funding for projects. In any case, all projects must be let by the applicant or through the department's office of contracts and in accordance with all applicable laws and rules.

ITEM 10. Amend renumbered rule 761—163.8(315) as follows:

761—163.8(315) Project activities eligible and ineligible for RISE funds.

163.8(1) Eligible activities. Project activities or costs eligible for RISE funding, and which may be counted as part of the non-RISE participation in immediate opportunity and local development roadway projects, include only the following:

a. to c. No change.

d. Public transportation system improvements, including but not limited to bus shelters, bus turnouts, and passenger information signage, when they are integral to the roadway improvement.

e. Bicycle and pedestrian infrastructure improvements, including but not limited to sidewalks, at-grade pedestrian crossings, bike lanes, and separated bike lanes, when they are integral to the roadway improvement.

~~d. f.~~ Right-of-way purchase acquisition costs, including but not limited to appraisals, negotiation, compensation, and cultural resources surveys necessary to comply with applicable local, state and federal laws, rules and regulations.

~~e. g.~~ Construction or improvement of motorist rest areas, welcome centers, and information centers.

~~f. h.~~ Design engineering costs leading to construction plan development and construction inspection costs associated with RISE-financed projects.

~~g. i.~~ County and city bond principal and interest payments associated with RISE projects. No financing expenses incurred prior to funding commitment shall be eligible.

~~h. j.~~ Storm drainage and storm sewer costs to the extent needed for draining the roadway.

k. Reconstruction or adjustment of utilities, including but not limited to water, sanitary sewer, electric, telephone, and natural gas, when utilities are located on private property and require replacement or relocation due to project construction; or said utilities are located in the public right-of-way and the utility is not required to relocate at its own expense.

l. Costs associated with the acquisition of local, state and federal permits required for roadway construction.

163.8(2) Ineligible activities. Activities or costs ineligible for RISE funding, and which may not be counted as part of the non-RISE participation in immediate opportunity or local development roadway projects, include but are not limited to the following:

a. Any and all costs incurred prior to a funding commitment by the commission ~~except for advance right-of-way acquisition costs necessary to protect or preserve a project corridor. If there is~~

~~an extreme urgency involving right-of-way acquisition, a potential applicant may formally request from the department written approval to acquire the right-of-way immediately without jeopardizing the eligibility of the acquisition costs for future RISE funding. Granting of this approval does not imply or guarantee that a subsequent application which includes the acquisition costs will be funded. The request must include justification regarding the urgency of the acquisition, a description of the land to be acquired, and a map showing its location. Approval to acquire right-of-way immediately must be requested from and granted by the department prior to the applicant's acquisition of the land in question. The RISE application which includes the acquisition costs must be received by the department within two years following the granting of this approval, or the approval is not valid notwithstanding rule 761—163.9(315).~~

- ~~b.~~ Routine roadway, bridge and culvert maintenance, including but not limited to pothole filling, crack sealing, seal coating, patching, shoulder maintenance, gravel or earth roadway maintenance, and bridge painting.
- ~~c.~~ Winter roadway and bridge maintenance, including but not limited to snow plowing, sanding, and salting.
- ~~d.~~ No change.
- ~~e.~~ Expenses associated with the preparation and submission of applications for RISE funding.
- ~~f.~~ Predesign engineering, feasibility or alignment studies, and other planning expenses.
- ~~g. and h.~~ No change.
- ~~i.~~ Electric, water, natural gas, telephone and other utility Utility construction, reconstruction or adjustment ~~except when utilities located on private property are replaced or relocated for project construction for those activities or costs described in subrule 163.8(1).~~
- ~~j. to m.~~ No change.
- ~~n.~~ Parking expenditures, including those for structures, lots, meters, paving, and marking whether for on-street or off-street parking.
- ~~o. to q.~~ No change.
- ~~r.~~ ~~Sanitary sewers.~~
- ~~s.~~ ~~Water mains.~~
- ~~t. r.~~ Donated right-of-way.

ITEM 11. Adopt the following new rule 761—163.9(315):

761—163.9(315) Advance eligibility of land acquisition and preliminary design costs incurred prior to funding commitment by commission.

163.9(1) *Need for advance eligibility.* If there is extreme urgency involving land acquisition or preliminary design and a necessity to protect or preserve a project corridor or to proceed with the preparation of project construction plans prior to a RISE funding commitment, a potential applicant may submit a written request to the department for a determination of advance eligibility to incur costs for land acquisition or preliminary design immediately. A determination of advance eligibility by the department will allow specified costs incurred prior to a funding commitment by the commission to be eligible for reimbursement with RISE funding without jeopardizing the project's eligibility for funding approval, but does not imply or guarantee that the commission will commit RISE funding to a subsequent application.

163.9(2) *Request, justification and review.* The request must be received by the department prior to the expenditure and must include justification regarding the extreme urgency and necessity to incur costs prior to a RISE funding commitment. A request for land acquisition must also include a description of the land to be acquired, a summary of the estimated costs, and a map showing the parcels to be acquired. Preliminary design requests must include a description of the project scope, location map, and proposed cross section. If the request will include consultant design costs, a draft agreement between the jurisdiction and the consultant must be submitted which includes the scope of services to be rendered. Costs for RISE application preparation and submission or project feasibility, route alignment studies or other planning expenses as cited in paragraphs 163.8(2) "e" and "f" remain ineligible for RISE funding and shall not be included in a request for determination of advance eligibility. The department will review

the submittal. If the requirements of this rule are met, the department will provide written confirmation of the determination of advance eligibility.

163.9(3) Requirements. Any cost incurred before the request is received by the department will be ineligible for reimbursement. Costs receiving a determination of advance eligibility must be noted in the subsequent RISE funding application submitted to the department. Land acquired or design work completed following a determination of advance eligibility will not be eligible for reimbursement with RISE funds if the property acquired or design work completed is not necessary to construct the proposed RISE project included in the subsequent application. Design costs receiving a determination of advance eligibility may not exceed 10 percent of the total construction costs for the project. An application for funding which includes the expenditure must be received by the department within two years following the determination of advance eligibility, or the costs may become ineligible for RISE funding.

ITEM 12. Amend renumbered rule 761—163.10(315) as follows:

761—163.10(315) Immediate opportunity projects.

163.10(1) No change.

163.10(2) Contents of applications. Each application for an immediate opportunity project must contain the following:

a. to *e.* No change.

~~*f.* For a road or street which is not currently dedicated to public use, written assurance of future dedication from the jurisdiction responsible or to be responsible for the road or street to be constructed or improved.~~

~~*g.* An official endorsement~~ A formal resolution passed by the governing body of the project proposal from the jurisdiction responsible or to be responsible for the road or street to be constructed or improved. ~~The jurisdiction must also provide written assurance~~ The resolution shall state that it the project will be adequately maintain the new or improved road or street. maintained and dedicated to public use for a minimum of 20 years after completion of the project. The resolution must also certify that the project meets the threshold criteria cited in paragraph 163.10(6) “a.”

~~*h.* *g.* Documentation showing that the threshold criteria of subrule 163.8(6) 163.10(6) have been met.~~

~~*i.* Rescinded IAB 8/8/01, effective 7/20/01.~~

163.10(3) Submission of applications. ~~Application instructions and forms for immediate opportunity projects are available from the office of systems planning or on the Internet at www.dot.state.ia.us/forms.~~ An original and one copy of each completed application shall be submitted to the office of systems planning department. Applications may be submitted at any time.

Once an application has been submitted, no further information concerning that application shall be accepted by the department from the applicant unless specifically requested by the department. Applications may be withdrawn by the applicant and resubmitted at any time. Resubmitted applications shall be dated accordingly.

163.10(4) Incomplete applications. An applicant must satisfy the application requirements outlined in this chapter of rules and must fully complete the official application form before ~~its applications~~ the application will be reviewed considered by the commission. ~~An applicant shall be notified if an application is incomplete. An incomplete application shall be reviewed when it is resubmitted in a complete form by the applicant.~~

163.10(5) No change.

163.10(6) Threshold criteria. Funding commitment decisions for immediate opportunity projects shall be made on an individual basis. There is no competitive ranking of project applications. In order to gain a funding commitment, an application must meet all of the following threshold criteria:

a. The project must be related to an immediate, nonspeculative opportunity for permanent job creation or retention. The applicant county or city (or its agent) should be in the process of negotiating a location or retention decision with a developer or firm. ~~This criterion may be satisfied by a resolution from the applicant county or city stating that it is involved in negotiations with a developer or firm.~~

b. and *c.* No change.

d. There must be at least 20 percent non-RISE financial participation in the roadway project, except as indicated in subparagraph (2) of this paragraph the commission may approve a participation amount that is less than 20 percent if it determines that the applicant city or county is economically distressed.

~~(1) This participation shall include only those items listed as eligible for RISE funding, and may be in the form of cash, the value of design engineering and construction inspection services, or the cost of eligible advance right-of-way acquisitions pursuant to paragraph 163.7(2)“a.” The applicant shall provide documentation to the department supporting the value of any noncash contribution to the project.~~

~~(2) The commission may approve a participation amount that is less than 20 percent if it determines that the applicant city or county is economically distressed.~~

e. There must be a strong likelihood that the total development, including the roadway project, can be completed in a timely manner. It is up to the applicant to identify a time schedule and maintain it. This time schedule may be adjusted ~~when agreed to by the commission if~~ for such reasons including but not limited to the project involves unusually complex engineering studies, extensive real estate negotiations, extensive analysis for environmental clearances, or unusually complex planning for associated development. The commission may withdraw funding if time schedules have been misrepresented or have not been maintained.

163.10(7) Review and funding of applications.

a. The staff of the department shall review complete immediate opportunity project applications and may consult with other organizations with economic development responsibilities. As part of the review, the staff shall evaluate the effect of the proposed project on the state economy using the following factors: consistency with the state economic development plan; diversification of the state economy; the impact on in-state suppliers, competitors, and import substitution; percentage of out-of-state sales; the quality of employment positions; and the record of law violations. This review shall be performed within a reasonable period of time after receipt of the application. Following this review, complete applications meeting the threshold criteria of subrule ~~163.8(6)~~ 163.10(6) shall be forwarded to the commission for action at ~~their~~ its next meeting.

b. and c. No change.

d. Immediate opportunity project applications may, at the discretion of the commission, be considered as applications for local development projects. These applications shall be included in the current round of local development project programming, regardless of the deadlines stated in subrule ~~163.9(3)~~ 163.11(3). However, immediate opportunity project applications submitted solely to circumvent the deadlines for local development project applications shall not be considered in this manner.

ITEM 13. Amend renumbered rule 761—163.11(315) as follows:

761—163.11(315) Local development projects.

163.11(1) No change.

163.11(2) Contents of applications. Each application for a local development project must contain the following:

a. to e. No change.

~~f. For a road or street which is not currently dedicated to public use, written assurance of future dedication from the jurisdiction responsible or to be responsible for the road or street to be constructed or improved.~~

~~g. f. An official endorsement of the project proposal from A formal resolution passed by the governing body of the jurisdiction responsible or to be responsible for the road or street to be constructed or improved. The jurisdiction must also provide written assurance that it The resolution shall state that the project will be adequately maintain the new or improved road or street maintained and dedicated to public use for a minimum of 20 years after completion of the project.~~

~~h. Reseinded IAB 8/8/01, effective 7/20/01.~~

163.11(3) Submission of applications. Application instructions and forms for local development projects are available from the office of systems planning or on the Internet at www.dot.state.ia.us/forms.

An original and one copy of each completed application shall be submitted to the ~~office of systems planning department~~.

a. Applications may be submitted at any time. However, in order to be considered in the current round of programming, complete applications must be received by the department or postmarked no later than February 1 or September 1.

b. No change.

163.11(4) *Incomplete applications.* An applicant must satisfy the application requirements outlined in this chapter ~~of rules~~ and must fully complete the official application form before ~~its~~ the application will be ~~reviewed~~ considered by the commission. An applicant shall be notified if an application is incomplete. ~~An incomplete application shall be reviewed when it is resubmitted in a complete form by the applicant.~~

163.11(5) No change.

163.11(6) *Rating factors.* The following factors and potential rating points shall be used in assessing applications for local development projects; ~~assessment~~. Assessment of these factors shall be the responsibility of the department.

a. to e. No change.

163.11(7) No change.

ITEM 14. Amend renumbered rule 761—163.12(315) as follows:

761—163.12(315) Project administration.

~~**163.12(1) *Projects located on primary roads or state park roads.*** RISE projects located on primary roads or state park roads shall be administered by the department in conformance with the requirements of Iowa Code chapter 315. The department may delegate part or all of this responsibility to another participating jurisdiction.~~

~~**163.12(2) *Projects located on secondary roads, city streets or county conservation parkways.***~~

~~*a.* **163.12(1) *Agreement.*** After a funding commitment has been made for a project located on secondary roads, city streets or county conservation parkways, the department shall enter into a project agreement with those local jurisdictions whose roads, streets or parkways are a part of the project the applicant. The agreement shall delineate responsibilities for project planning, design, right-of-way, contracting, construction and materials inspection, and documentation. The agreement shall require that a business assisted by the project which acquires or merges with an Iowa corporation within three years following the RISE application shall make a good-faith effort to hire the workers of the merged or acquired company. The agreement shall require the applicant to comply with all local, state, and federal laws, rules and regulations that may apply to the project.~~

~~*b.* **163.12(2) *Project payments.*** Payments from the RISE fund to counties or cities shall be made on a cost reimbursement basis, and financial participation shall be limited to the maximum percentage allowed by the funding commitment. All known required environmental permits must be granted and regulations met before moneys are released. The non-RISE financial participation shall include only those items listed as eligible for RISE funding and may be in the form of cash, the value of design engineering and construction inspection services, or the cost of eligible advance right-of-way acquisitions or preliminary design pursuant to rule 761—163.9(315). Grants from other state agencies or programs may also contribute to the non-RISE financial participation if their laws and rules allow. The applicant shall provide documentation to the department supporting the value of any noncash contribution to the project. The department has the sole authority to determine the value of noncash contributions. Contributions made by a third party may be allowed.~~

~~*c.* **163.12(3) *Project expenditures incurred prior to agreement.*** Project expenditures incurred after the commission has made a funding commitment, but before execution of the agreement, ~~may be~~ are eligible for reimbursement if ~~prior written authorization is obtained from the department and an~~ a project agreement is subsequently executed. However, under no circumstances shall any reimbursement be paid until the agreement has been executed.~~

~~*d.* **163.12(4) *Remedies for noncompliance with project agreement.*** The commission may revoke funding commitments, require repayment of RISE funds loaned or granted, or take both actions when the county or city has not fulfilled the terms of the project agreement.~~

~~163.12(3)~~ **163.12(5)** *Cost overruns.* RISE funds committed for projects are for a maximum dollar amount. Cost overruns shall be the responsibility of the administering jurisdiction.

163.12(6) *Audit.* The department may audit all project costs incurred for compliance with the agreement, including costs that are part of the matching contribution. All force account work performed by a county or city on the project shall be audited.

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